

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	
)	
U S WAY, INC.,)	CHAPTER 11
)	
DEBTOR)	CASE NO. 17-07277-RLM-11
_____)	

**OBJECTION OF EVERBANK COMMERCIAL FINANCE, INC.
TO THE CONFIRMATION OF DEBTOR’S PROPOSED CHAPTER 11
PLAN AND DISCLOSURE STATEMENT DATED JANUARY 31, 2018**

EverBank Commercial Finance, Inc. (“*EverBank*”), by and through its attorneys, Quarles & Brady LLP, respectfully submits herein its objection to the Confirmation of the Disclosure Statement and Small Business Plan of Reorganizations (the “*Plan*”) [D.I. 83] filed by Debtor U S Way, Inc. (“*Debtor*”) on January 31, 2018.

Introduction

1. On September 22, 2017 (the “*Petition Date*”), Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*
2. On January 19, 2018, EverBank filed its original Proof of Claim [Claim 8-1].
3. On January 31, 2018, the Debtor filed its Plan.
4. On February 20, 2018, EverBank filed its amended Proof of Claim (the “*Amended Claim*”) [Claim 8-2]. A true and correct copy of the Amended Claim and Schedule One thereto are attached hereto as Exhibit 1 and incorporated herein by reference.
5. As set forth in the Amended Claim: (a) Debtor executed two loan agreements (the “*Loan Agreements*”) to finance the acquisition of two 2014 Kenworth Model T-660 (the “*Vehicles*”); (b) EverBank has a perfected security interest in the Vehicles; (c) EverBank is the holder of the Loan Agreements, has possession of the Titles (as defined in the Amended Claim),

and is entitled to enforce the Loan Agreements; and (d) Debtor has defaulted under the Loan Agreements as a result of its failure to make timely and complete payment due thereunder prior to the Petition Date.

6. As of the Petition Date, Debtor was indebted to EverBank in an amount not less than \$130,027.52.

Objection to Plan and Disclosure Statement

7. The Plan and Disclosure Statement propose to treat EverBank's claim as an allowed secured claim in the amount of \$40,068.35, with interest accruing at five percent (5%) commencing on the Petition Date, and Debtor to pay EverBank \$3,000.00 per month until EverBank's claim is paid in full.

8. However, as set forth in the Amended Claim, as of the Petition Date, Debtor was indebted to EverBank in an amount not less than \$130,027.52.

9. Accordingly, EverBank objects to the Debtor's Disclosure Statement and the proposed treatment of EverBank's secured claim under the Plan. The Disclosure Statement does not contain adequate information for EverBank to make an informed decision because it does not accurately reflect the Amended Claim amount and does not state the repayment schedule. The Plan does not meet the requirements of Chapter 11 because the Debtor does not provide for the full payment of EverBank's secured claim.

WHEREFORE, EverBank Commercial Finance, Inc., requests that the Court sustain EverBank's Objection to the Plan, as set forth above, and grant such other and further relief as the Court deems just and proper.

Dated: February 27, 2018

Respectfully submitted,

EverBank Commercial Finance, Inc.

By: /s/ Jeffrey M. Monberg
One of its attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2018, the foregoing Objection of EverBank Commercial Finance, Inc. to Debtor's Chapter 11 Plan dated January 31, 2018, was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

- Alexander Nichols Wright on behalf of Creditor First Midwest Equipment Finance Co.
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I further certify that on February 27, 2018, the foregoing Objection of EverBank Commercial Finance, Inc. to Debtor's Chapter 11 Plan dated January 31, 2018 was mailed by the first-class U.S. Mail, postage prepaid, and properly addressed to the following:

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 /s/ Jeffrey M. Monberg